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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Leandra Pierce,

10 Plaintiff,

11 v.

12 New Hampshire Department of Children
13 Youth and Families, et al.,

14 Defendants.

No. CV-23-00646-PHX-DJH

ORDER

15 Plaintiff Leandra Pierce (“Plaintiff”) has filed an Application to Proceed in District
16 Court Without Prepaying Fees or Cost (Doc. 2). Upon review, Plaintiff’s Application,
17 signed under penalty of perjury, indicates that she is financially unable to pay the filing
18 fee. The Court will grant Plaintiff’s Application and allow her to proceed *in forma pauperis*
19 (“IFP”). Pursuant to 28 U.S.C. § 1915(e)(2), the Court will proceed to screen Plaintiff’s
20 Complaint (Doc. 1).

21 **I. Legal Standard**

22 The determination that Plaintiff may proceed IFP does not end the inquiry under
23 28 U.S.C. § 1915. When a party has been granted IFP status, the Court must review the
24 complaint to determine whether the action:

- 25 (i) is frivolous or malicious;
26 (ii) fails to state a claim on which relief may be granted; or
27 (iii) seeks monetary relief against a defendant who is immune from such relief.
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1 See 28 U.S.C. § 1915(e)(2)(B).¹ In conducting this review, “section 1915(e) not only
 2 permits but requires a district court to dismiss an [IFP] complaint that fails to state a claim.”
 3 *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (citation omitted). Rule 8(a) of the
 4 Federal Rules of Civil Procedure requires that:

5 A pleading which sets forth a claim for relief, whether an original claim,
 6 counter-claim, cross-claim, or third-party claim, shall contain (1) a short and
 7 plain statement of the grounds upon which the court’s jurisdiction depends,
 8 unless the court already has jurisdiction and the claim needs no new grounds
 9 of jurisdiction to support it, (2) a short and plain statement of the claim
 10 showing that the pleader is entitled to relief, and (3) a demand for judgment
 for the relief the pleader seeks. Relief in the alternative or of several different
 types may be demanded.

11 Fed. R. Civ. P. 8(a). While Rule 8 does not demand detailed factual allegations, “it demands
 12 more than an unadorned, the defendant-unlawfully-harmed-me accusation.” *Ashcroft v.*
 13 *Iqbal*, 556 U.S. 662, 678 (2009).² “Threadbare recitals of the elements of a cause of action,
 14 supported by mere conclusory statements, do not suffice.” *Id.* A complaint “must contain
 15 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its
 16 face.” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim
 17 is plausible “when the plaintiff pleads factual content that allows the court to draw the
 18 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing
 19 *Twombly*, 550 U.S. at 556). A complaint that provides “labels and conclusions” or “a
 20 formulaic recitation of the elements of a cause of action will not do.” *Twombly*, 550 U.S.
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22 ¹ “While much of § 1915 outlines how prisoners can file proceedings *in forma pauperis*,
 23 §1915(e) applies to all *in forma pauperis* proceedings, not just those filed by prisoners.”
 24 *Long v. Maricopa Cmty. College Dist.*, 2012 WL 588965, at *1 (D. Ariz. Feb. 22, 2012)
 25 (citing *Lopez v. Smith*, 203 F.3d 1122, 1126 n. 7 (9th Cir. 2000) (“[S]ection 1915(e) applies
 to all *in forma pauperis* complaints[.]”); see also *Calhoun v. Stahl*, 254 F.3d 845 (9th Cir.
 2001) (“[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.”)
 (citation omitted). Therefore, section 1915 applies to this non-prisoner IFP complaint.

26 ² “Although the *Iqbal* Court was addressing pleading standards in the context of a Rule
 27 12(b)(6) motion, the Court finds that those standards also apply in the initial screening of
 28 a complaint pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A since *Iqbal* discusses the
 general pleading standards of Rule 8, which apply in all civil actions.” *McLemore v. Dennis*
Dillon Automotive Group, Inc., 2013 WL 97767, at *2 n. 1 (D. Idaho Jan. 8, 2013).

1 at 555. Nor will a complaint suffice if it presents nothing more than “naked assertions”
 2 without “further factual enhancement.” *Id.* at 557.

3 The Court must accept all well-pleaded factual allegations as true and interpret the
 4 facts in the light most favorable to the plaintiff. *Shwarz v. United States*, 234 F.3d 428,
 5 435 (9th Cir. 2000). That rule does not apply, however, to legal conclusions. *Iqbal*, 556
 6 U.S. at 678. The Court is mindful that it must “construe pro se filings liberally when
 7 evaluating them under *Iqbal*.” *Jackson v. Barnes*, 749 F.3d 755, 763–64 (9th Cir. 2014)
 8 (quoting *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010)).

9 **II. Statutory Screening**

10 Plaintiff has filed suit against Child Protective Services Worker (“CPSW”) Lisa Bell
 11 of the New Hampshire Division for Children, Youth and Families; Officer Oulette of the
 12 Bow Police Department; and the Honorable Judge Thomas Cooper (collectively
 13 “Defendants”). (Doc. 1 at 2). Plaintiff alleges that on May 21, 2021, M.P., who is
 14 presumably Plaintiff’s child, “was illegally removed—IN HANDCUFFS—by Bow Police
 15 Officer Oulette for [CPSW] Bell . . . without reason warrant, or court order.” (*Id.* at 4).
 16 Plaintiff further states that the Sixth Circuit Court of New Hampshire (the “New Hampshire
 17 state court”) violated the Uniform Child Custody Jurisdiction and Enforcement Act
 18 (“UCCJEA”), Fourth Amendment, and Twenty-Fourth Amendment by awarding
 19 temporary physical custody of M.P. to Steven Bargabos (“Bargabos”), who is M.P.’s
 20 biological father. (*Id.* at 4). Plaintiff represents the court’s order allowed Bargabos to
 21 “drag M.P. across the continent” without Plaintiff’s consent. (*Id.* at 5).

22 Plaintiff claims that Defendants violated her and M.P.’s rights under the Fourth
 23 Amendment, Fourteenth Amendment, and Child Welfare Act, 42 U.S.C.S. § 670 *et seq.*
 24 (“CWA”). (*Id.* at 3). For relief, Plaintiff seeks “reversal of lower court orders” and three
 25 million dollars in punitive damages. (*Id.* at 5). She maintains that “M.P. has suffered
 26 irreparable psychological, emotional and cognitive harm for which [Bargabos] has not
 27 provided adequate care of support due to his own cognitive and psychological health
 28 issues.” (*Id.*)

1 As discussed below, the Court will dismiss Plaintiff's Complaint because it does not
 2 give rise to any cognizable claim under any civil cause of action and purports to bring
 3 claims against Judge Cooper that are barred by the doctrine of judicial immunity.

4 **A. Plaintiff's Claims**

5 Plaintiff's Complaint alleges violations of her and M.P.'s rights under the Fourth
 6 Amendment, Fourteenth Amendment, and the CWA. Plaintiff also seeks reversal of a state
 7 court order. The Court will address each claim in turn.

8 **1. Constitutional Claims**

9 Plaintiff appears to assert the wrongful removal of M.P. violated her and M.P.'s
 10 Fourth Amendment rights, Fourteenth Amendment rights, and rights protected by the
 11 CWA. Thus, the Court will construe these claims as brought under 42 U.S.C. § 1983,
 12 which creates a private right of action for a plaintiff to assert a violation of their federal
 13 constitutional rights. To state a Section 1983 claim, a plaintiff must allege (1) the violation
 14 of a constitutional right that was (2) committed by a person acting under color of state
 15 law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

16 **a. The Fourth Amendment**

17 First, Plaintiff's Fourth Amendment claim is barred as a matter of law. The Fourth
 18 Amendment protects "[t]he right of the people to be secure in their persons, houses, papers,
 19 and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. The
 20 purpose of the Amendment "is to safeguard the privacy and security of individuals against
 21 arbitrary invasions by governmental officials." *Carpenter v. United States*, 138 S. Ct.
 22 2206, 2213 (2018) (quoting *Camara v. Municipal Court of City and County of San*
 23 *Francisco*, 387 U. S. 523, 528 (1967)). Fourth Amendment rights, however, are personal
 24 rights that cannot be vicariously asserted. *Alderman v. United States*, 394 U.S. 165, 174
 25 (1969).

26 Plaintiff alleges that "*M.P.* was illegally removed . . . by Bow Police Officer Oulette
 27 for [CPSW] Bell[.]" (Doc. 1 at 4) (emphasis added). "While a person has standing to
 28 challenge the seizure of his or her own person, a person does not have standing to

1 vicariously assert the Fourth Amendment rights of another person.” *Osborne v. County of*
 2 *Riverside*, 385 F. Supp 2d 1048, 1052 (C.D. Cal. 2005) (citing *Moreland v. Las Vegas*
 3 *Metro. Police Dep’t*, 159 F.3d 365, 369 (9th Cir. 1998)); *see also Teixeira v. Hanneman*,
 4 2018 WL 6164309 (C.D. Cal. Mar. 6, 2018). M.P. is not named as a plaintiff in this case.
 5 Thus, Plaintiff lacks standing to assert a claim under 42 U.S.C. § 1983 on Fourth
 6 Amendment grounds because Plaintiff does not claim that she herself was seized.

7 Plaintiff’s Fourth Amendment claim is therefore dismissed with prejudice.

8 **b. The Fourteenth Amendment**

9 Second, although Plaintiff lacks standing under the Fourth Amendment, she may
 10 have standing under the Fourteenth Amendment to bring a wrongful removal claim on
 11 behalf of M.P. *See Wallis v. Spencer*, 202 F.3d 1126, 1137 n.8 (9th Cir. 2000). A parent’s
 12 claim of their minor child’s wrongful removal is “properly [] assessed under the Fourteenth
 13 Amendment standard for interference with the right to family association.” *Id.*; *see e.g.*,
 14 *Moore v. Cnty. of Sacramento, Dep’t of Child*, 2020 WL 2489736 (E.D. Cal. May 14,
 15 2020). This is based on protecting the liberty interest that custodial parents have in the
 16 “companionship, care, custody, and management” of their children. *Stanley v. Illinois*, 405
 17 U.S. 645, 651 (1972); *Troxel v. Granville*, 530 U.S. 57, 66 (2000); *see Leubner v. Cnty. of*
 18 *San Joaquin*, 2009 WL 1212248, at *2 (E.D. Cal. May 5, 2009) (explaining that “parents
 19 and children have a constitutional right to live together without governmental interference
 20 and will not be separated without due process of law except in emergencies”).

21 However, a parent’s Fourteenth Amendment rights in the familial context are not
 22 absolute. *Chagolla v. Vullo*, 2019 WL 6841737, at *2 (D. Ariz. Dec. 16, 2019), *aff’d*, 834
 23 F. App’x 350 (9th Cir. 2021) (citing *Troxel*, 530 U.S. at 65). “Officials violate parental
 24 rights if they remove a child from the home absent information at the time of the seizure
 25 that establishes reasonable cause to believe that the child is in imminent danger of serious
 26 bodily injury and that the scope of the intrusion is reasonably necessary to avert that
 27 specific injury.” *Id.* (quoting *Mabe v. San Bernardino Cty., Dep’t of Pub. Soc. Servs.*, 237
 28 F.3d 1101, 1106 (9th Cir. 2001)) (internal quotations omitted).

1 The Court liberally construes Plaintiff's Complaint to allege that Defendants
2 violated her Fourteenth Amendment substantive due process right to familial association
3 when M.P. was wrongfully removed. (Doc. 1 at 4). At the outset, it is unclear whether
4 Plaintiff was the custodial parent of M.P. at the time of M.P.'s removal. Plaintiff admits
5 that the New Hampshire state court awarded "temporary physical custody" of M.P. to
6 Bargabos and "granted him permission" to take M.P. to Arizona. (*Id.*) But Plaintiff does
7 not explain the timeline of these proceedings in relation to the alleged removal of M.P. on
8 May 21, 2021. Plaintiff cannot bring a Fourteenth Amendment claim if she lacks
9 constitutional familial rights as a noncustodial parent. *See Troxel*, 530 U.S. at 65
10 (explaining the "the custodial parent has a constitutional right" to parental rights); *see also*
11 *Campbell v. Burt*, 141 F.3d 927, 929 (9th Cir. 1998) (distinguishing a parent with "mere
12 visitation rights" from one with "full legal custody of his children").

13 As to Officer Oulette, Plaintiff does not provide sufficient facts regarding the
14 circumstances of M.P.'s removal or specify why it was carried out without cause. For
15 example, Plaintiff does not allege that Officer Oulette lacked reason to believe that M.P.
16 was in imminent danger of serious bodily injury at the time of her removal. Plaintiff also
17 admits to Bargabos' custody of M.P., which implies there is a court order saying as much.³
18 Plaintiff merely states that M.P. was removed by Officer Oulette in handcuffs without
19 probable cause, warrant, or court order. These "labels and conclusions" will not do as it
20 presents nothing more than "naked assertions" without further factual enhancement.
21 *Twombly*, 550 U.S. at 555, 557.

22 As to CPSW Bell, Plaintiff does not state with particularity the involvement CPSW
23 Bell had in M.P.'s removal. *See Leubner*, 2009 WL 1212248, at *2 (explaining that a claim
24 brought under 42 U.S.C. § 1983 requires "an actual connection or link between the actions
25 of the defendants and the deprivation alleged to have been suffered by plaintiff") (citing
26 *Monell v. Department of Social Servs.*, 436 U.S. 658, 98 (1976)). Plaintiff only states that
27 M.P. was removed by Officer Oulette *for* CPSW Bell. (Doc. 1 at 4). Supervisory

28 ³ As explained below, the Court lacks jurisdiction to review on appeal the merits of a state
court's custody determinations. *See infra* Section II.A(2).

1 personnel, however, “are generally not liable under § 1983 for the actions of their
 2 employees under a theory of *respondeat superior* and, therefore, when a named defendant
 3 holds a supervisory position, the causal link . . . must be specifically alleged.” *Id.* at *3
 4 (citing *Fayle v. Stapley*, 607 F.2d 858, 862 (9th Cir. 1979)). Plaintiff does not explain the
 5 extent of CPSW Bell’s personal participation, and conclusory allegations concerning the
 6 involvement of official personnel in civil rights violations are insufficient to state a
 7 cognizable claim. *Id.*

8 In sum, Plaintiff does not state adequate facts to bring a wrongful removal claim
 9 under 42 U.S.C. § 1983 on Fourteenth Amendment grounds. Plaintiff’s Fourteenth
 10 Amendment claim is therefore dismissed without prejudice.

11 **c. Federal Child Welfare Act**

12 Third, Plaintiff appears to allege violation of her rights under the CWA. Although
 13 certain provisions of the CWA are enforceable through 42 U.S.C. § 1983, *see Henry A. v.*
 14 *Willden*, 678 F.3d 991, 1006 (9th Cir. 2012), Plaintiff does not identify which CWA
 15 provisions she seeks to invoke apart from naming the CWA generally. This is insufficient
 16 to state a claim for which relief can be granted under 42 U.S.C. § 1983.

17 Plaintiff’s CWA claim is therefore dismissed without prejudice.

18 **2. Appeal of State Court Order**

19 Last, Plaintiff cannot seek this Court to reverse an order issued by the New
 20 Hampshire state court. Under the *Rooker-Feldman* doctrine, this Court has no jurisdiction
 21 to review a state court’s custody determinations. *Moore*, 2020 WL 2489736, at *5 (citing
 22 *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004) (explaining the doctrine “bars
 23 federal district courts from exercising subject matter jurisdiction over a suit that is a de
 24 facto appeal from a state court judgment”)). The Ninth Circuit has explained the role of
 25 the *Rooker-Feldman* doctrine as follows:

26 If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision
 27 by a state court, and seeks relief from a state court judgment based on that
 28 decision, *Rooker-Feldman* bars subject matter jurisdiction in federal district
 court. If, on the other hand, a federal plaintiff asserts as a legal wrong an

1 allegedly illegal act or omission by an adverse party, *Rooker-Feldman* does
2 not bar jurisdiction.

3 *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003).

4 Plaintiff argues here that the New Hampshire state court violated the UCCJEA,
5 Fourth, and Twenty-Fourth Amendments when it awarded temporary physical custody of
6 M.P. to Bargabos. (Doc. 1 at 4). Plaintiff's request for reversal "goes to the heart" of the
7 New Hampshire state court's custody proceedings and is therefore barred by *Rooker-*
8 *Feldman*. See *Moore*, 2020 WL 2489736, at *5.

9 **B. Claims Prohibited Against Judge Thomas Cooper**

10 Furthermore, Plaintiff is barred from bringing certain claims against Judge Cooper.
11 Judges and certain court officials who assist the court in the judicial process and who
12 perform functions intimately related to, or an integral part of, the judicial process are
13 protected by judicial or absolute immunity for acts performed in their official capacities.
14 *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir. 1986) (en banc); *Acevedo v. Pima County*
15 *Adult Probation Dep't*, 690 P.2d 38, 40 (Ariz. 1984). The purpose behind judicial
16 immunity is to protect "principled and fearless decision-making." *Rankin v. Howard*, 633
17 F.2d 844, 847 (9th Cir. 1980) (quoting *Pierson v. Ray*, 386 U.S. 547, 554 (1967)). Plaintiff
18 does not specify what conduct she seeks to hold Judge Cooper liable for. However, Judge
19 Cooper is likely entitled to judicial immunity if the alleged conduct concerns actions
20 performed in his official capacity as a judge.

21 In sum, the Court will dismiss Plaintiff's Complaint because she fails to bring any
22 cognizable claim under any civil cause of action. The following claims are barred as a
23 matter of law: Plaintiff's claim for wrongful removal under the Fourth Amendment,
24 Plaintiff's claims requesting reversal of the New Hampshire state court's order, and
25 Plaintiff's claims regarding Judge Cooper's conduct performed in his official capacity as a
26 judge. To the extent Plaintiff wishes to bring claims under the Fourteenth Amendment and
27 CWA, however, the Court will grant her leave to file an amended complaint doing so.

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1 **III. Leave to Amend**

2 In accordance with the well-settled law in this Circuit, because “it is not ‘absolutely
3 clear’ that [Plaintiff] could not cure [the Complaint’s] deficiencies by amendment,” the
4 Court will give her the opportunity to do so. *See Jackson v. Barnes*, 749 F.3d 755, 767
5 (9th Cir. 2014) (citations omitted); *see also Lopez*, 203 F.3d at 1131 (en banc) (internal
6 quotation marks and citations omitted) (holding that a pro se litigant must be given leave
7 to amend his complaint “if it appears at all possible that the plaintiff can correct the defect”
8 in the complaint). It will dismiss the Complaint and grant leave for Plaintiff to file a first
9 amended complaint within **thirty (30) days** from the date of entry of this Order. *See Fed.*
10 *R. Civ. P. 15(a)(2)* (leave to amend should be “freely” given “when justice so requires[.]”).

11 Plaintiff’s complaint must be amended to address the deficiencies identified above
12 and she must clearly designate on the face of the document that it is the “First Amended
13 Complaint.” Plaintiff should tell her case’s story in a short and plain manner then state
14 each claim or cause of action a separate count, alleging facts that that satisfy all of the
15 elements of the claims she is bringing. For example, she must clarify her custody of M.P.
16 and elaborate on the factual circumstances surrounding M.P.’s removal. Plaintiff must also
17 specify how Officer Oulette and CPSW Bell’s participation in removing M.P. violates
18 Plaintiff’s substantive due process right to familial association under the Fourteenth
19 Amendment and protected rights under the CWA.

20 Plaintiff’s amended complaint should follow the form detailed in Rule 7.1 of the
21 Local Rules of Civil Procedure (“LRCiv”). Examples of different types of complaints
22 demonstrating the proper form can be found in the appendix of forms that is contained with
23 the Federal Rules of Civil Procedure (forms 11–21).⁴ This amended complaint must be
24 retyped or rewritten in its entirety and may not incorporate any part of the original
25 Complaint by reference. It must also clearly state the grounds for this Court’s jurisdiction,
26 either by bringing a federal cause of action or by showing how the Court may exercise its

27 ⁴ Those forms as well as the Federal Rules of Civil Procedure and the Local Rules, as well
28 as other information for individuals filing without an attorney may be found on the District
Court’s internet web page at www.azd.uscourts.gov/.

1 diversity jurisdiction. *See* Fed. R. Civ. P. 8(a)(1).

2 The Court recommends Plaintiff review the information available in the District
3 Court's Handbook for Self-Represented Litigants, which is available online.⁵ Plaintiff
4 should also be aware that "an amended complaint supersedes the original complaint and
5 renders it without legal effect[.]" *Lacey v. Maricopa County*, 693 F.3d 896, 927 (9th Cir.
6 2012) (en banc). Thus, after amendment, the Court will treat an original complaint as
7 nonexistent. *Id.* at 925.

8 **IV. Warning**

9 Plaintiff is advised that if she elects to file an amended complaint but fails to comply
10 with the Court's instructions explained in this Order, the action will be dismissed pursuant
11 to section 28 U.S.C. § 1915(e) and/or Rule 41(b) of the Federal Rules of Civil Procedure.
12 *See McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996) (affirming dismissal with
13 prejudice of amended complaint that did not comply with Rule 8(a)). If Plaintiff fails to
14 prosecute this action, or if she fails to comply with the rules or any court order, the Court
15 may dismiss the action with prejudice pursuant to Rule 41(b) of the Federal Rule of Civil
16 Procedure. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992); *Ghazali v. Moran*,
17 46 F.3d 52, 54 (9th Cir. 1995).

18 Accordingly,

19 **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed in District
20 Court Without Prepaying Fees or Costs (Doc. 2) is **GRANTED**.

21 **IT IS FURTHER ORDERED** that Plaintiff's Complaint (Doc. 1) is dismissed with
22 leave to file a First Amended Complaint within **thirty (30) days** of the date this Order is
23 entered.


24 **IT IS FURTHER ORDERED** that if Plaintiff does not file a First Amended
25 Complaint within **thirty (30) days** of the date this Order is entered, the Clerk of Court shall
26 dismiss this action without further order of this Court; and

27 **IT IS FINALLY ORDERED** that if Plaintiff elects to file a First Amended

28 ⁵ The Handbook may be found at <http://www.azd.uscourts.gov/handbook-self-represented-litigants>.

1 Complaint, it may not be served until and unless the Court issues an Order screening the
2 amended complaint pursuant to 28 U.S.C. § 1915(e)(2).

3 Dated this 5th day of May, 2023.

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6 
7 Honorable Diane J. Humetewa
8 United States District Judge
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